

SENATE BILL 360

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SB 858/24 – JPR

5lr0837

By: **Senators Hester and Smith**

Introduced and read first time: January 17, 2025

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 21, 2025

CHAPTER _____

1 AN ACT concerning

2 **Revenge Porn – Civil Action and Criminal Offense**

3 FOR the purpose of authorizing a person to bring and maintain a civil action for defamation
4 under certain circumstances; prohibiting a person from knowingly distributing a
5 certain computer-generated visual representation of another under certain
6 circumstances; and generally relating to a civil action and criminal offense for
7 revenge porn.

8 BY adding to
9 Article – Courts and Judicial Proceedings
10 Section 3–505
11 Annotated Code of Maryland
12 (2020 Replacement Volume and 2024 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 3–809
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2024 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



3-505.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMPUTER-GENERATED VISUAL REPRESENTATION" INCLUDES:

(I) A VISUAL REPRESENTATION CREATED WITHOUT USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON; AND

(II) A VISUAL REPRESENTATION CREATED USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON WITHOUT THE PERSON'S CONSENT.

(3) "DISTRIBUTE" HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.

(4) (I) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL REPRESENTATION OF THE PERSON.

(II) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON" INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR GENUINE.

(III) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON" DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING A PERSON THAT ARE:

- 1. DRAWINGS;**
- 2. CARTOONS;**
- 3. SCULPTURES; OR**
- 4. PAINTINGS.**

(5) "INTIMATE PARTS" HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.

(6) "SEXUAL ACTIVITY" HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.

(B) A PERSON MAY BRING AND MAINTAIN A CIVIL ACTION FOR DEFAMATION PER SE AGAINST ANOTHER WHO DISTRIBUTES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON AND FALSELY DEPICTS THE PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR ENGAGED IN SEXUAL ACTIVITY.

(C) IN ADDITION TO OTHER RELIEF, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

Article – Criminal Law

3-809.

(a) (1) In this section the following words have the meanings indicated.

(2) “COMPUTER-GENERATED VISUAL REPRESENTATION” INCLUDES:

(I) A VISUAL REPRESENTATION CREATED WITHOUT USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON; AND

(II) A VISUAL REPRESENTATION CREATED USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON WITHOUT THE PERSON'S CONSENT.

(3) “Distribute” means to give, sell, transfer, disseminate, publish, upload, circulate, broadcast, make available, allow access to, or engage in any other form of transmission, electronic or otherwise.

[(3)] (4) “Harm” means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

(5) (I) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS OF AN ACTUAL AND IDENTIFIABLE PERSON.

(II) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE PERSON.

(III) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” DOES NOT INCLUDE VISUAL REPRESENTATIONS OR ITEMS DEPICTING A PERSON THAT ARE:

1. DRAWINGS;
2. CARTOONS;
3. SCULPTURES; OR
4. PAINTINGS.

[(4)] (6) “Intimate parts” means the naked genitals, pubic area, buttocks, or female nipple.

[(5)] (7) “Sexual activity” means:

- (i) sexual intercourse, including genital–genital, oral–genital, anal–genital, or oral–anal;
- (ii) masturbation; or
- (iii) sadomasochistic abuse.

(b) (1) This section does not apply to:

- (i) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings; or
- (ii) situations involving voluntary exposure in public or commercial settings.

(2) An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable under this section for content provided by another person.

(c) (1) A person may not knowingly distribute a visual representation of another identifiable person that displays the other person with his or her intimate parts exposed or while engaged in an act of sexual activity:

[(1)] (I) with the intent to harm, harass, intimidate, threaten, or coerce the other person;

[(2) (i)] (II) 1. under circumstances in which the person knew that the other person did not consent to the distribution; or

1 [(ii)] 2. with reckless disregard as to whether the person
2 consented to the distribution; and

3 [(3)] (III) under circumstances in which the other person had a reasonable
4 expectation that the image would remain private.

5 (2) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A
6 COMPUTER–GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE
7 FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER
8 PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT
9 OF SEXUAL ACTIVITY:

10 (I) WITH THE INTENT TO HARM, HARASS, INTIMIDATE,
11 THREATEN, OR COERCE THE OTHER PERSON; AND

12 (II) 1. UNDER CIRCUMSTANCES IN WHICH THE PERSON
13 KNEW THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR

14 2. WITH RECKLESS DISREGARD AS TO WHETHER THE
15 PERSON CONSENTED TO THE DISTRIBUTION.

16 (d) A person who violates this section is guilty of a misdemeanor and on conviction
17 is subject to imprisonment not exceeding 2 years or a fine not exceeding \$5,000 or both.

18 (e) A person who violates this section is subject to § 5–106(b) of the Courts Article.

19 (f) A visual representation AND A COMPUTER–GENERATED VISUAL
20 REPRESENTATION of a victim that is part of a court record for a case arising from a
21 prosecution under this section:

22 (1) subject to item (2) of this subsection, may not be made available for
23 public inspection; and

24 (2) except as otherwise ordered by the court, may only be made available
25 for inspection in relation to a criminal charge under this section to:

26 (i) court personnel;

27 (ii) a jury in a criminal case brought under this section;

28 (iii) the State’s Attorney or the State’s Attorney’s designee;

29 (iv) the Attorney General or the Attorney General’s designee;

30 (v) a law enforcement officer;

(vi) the defendant or the defendant's attorney; or

(vii) the victim or the victim's attorney.

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2025.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.